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### Subpart A—General Provisions

EDITORIAL NOTE: At 73 FR 58435, Oct. 7, 2008, the application of subpart A to part 9701 was rescinded.

#### § 9701.101 Purpose.

(a) This part contains regulations governing the establishment of a new human resources management system within the Department of Homeland Security (DHS), as authorized by 5 U.S.C. 9701. As permitted by section 9701, these regulations waive and replace various statutory provisions that would otherwise be applicable to affected DHS employees. These regulations are issued jointly by the Secretary of Homeland Security and the Director of the Office of Personnel Management (OPM).

(b) The system established under this part is designed to be mission-centered, performance-focused, flexible, contemporary, and excellent; to generate respect and trust through employee involvement; to be based on the principles of merit and fairness embodied in the statutory merit system principles; and to comply with all other applicable provisions of law.

#### § 9701.102 Eligibility and coverage.

(a) All civilian employees of the Department are eligible for coverage under one or more subparts of this part except those covered by a provision of law outside the waivable chapters of title 5, U.S. Code, identified in § 9701.104. For example, Transportation

Security Administration employees, employees appointed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Secret Service Uniformed Division members, Coast Guard Academy faculty members, and Coast Guard military members are not eligible for coverage under any classification or pay system established under subpart B or C of this part. Refer to subparts B through G of this part for specific information regarding the coverage of each subpart.

(b)(1) Subpart A of this part becomes applicable to all eligible employees on March 3, 2005.

(2) The Secretary or designee may, at his or her sole and exclusive discretion and after coordination with OPM, establish the effective date for applying subparts E, F, and G of this part to all eligible employees. Unless otherwise determined by the Secretary and the Director, subparts E, F, and G of this part will become applicable to all eligible employees no later than August 1, 2005.

(3) With respect to subparts B, C, and D of this part, the Secretary or designee may, at his or her sole and exclusive discretion and after coordination with OPM, apply one or more of these subparts to a specific category or categories of eligible civilian employees at any time. With respect to any given category of civilian employees, the Secretary or designee may apply some of these subparts, but not others, and such coverage determinations may be made effective on different dates (e.g., in order to phase in coverage under a new classification, pay, and performance management system).

(4) DHS will notify affected employees and labor organizations in advance of the application of one or more subparts of this part to them.

(c) Until the Secretary or designee makes a determination under paragraph (b) of this section to apply the provisions of one or more subparts of this part to a particular category or categories of eligible DHS employees, those DHS employees will continue to be covered by the applicable Federal laws and regulations that would apply to them in the absence of this part. All personnel actions affecting DHS employees must be based on the Federal

laws and regulations applicable to them on the effective date of the action.

(d) Any new DHS classification, pay, or performance management system covering Senior Executive Service (SES) members must be consistent with the policies and procedures established by the Governmentwide SES pay-for-performance system authorized by 5 U.S.C. chapter 53, subchapter VIII, and applicable implementing regulations issued by OPM. If the Secretary determines that SES members employed by DHS should be covered by classification, pay, or performance management provisions that differ substantially from the Governmentwide SES pay-for-performance system, the Secretary and the Director must issue joint regulations consistent with all of the requirements of 5 U.S.C. 9701.

(e) At his or her sole and exclusive discretion, the Secretary or designee may, after coordination with OPM, rescind the application under paragraph (b) of this section of one or more subparts of this part to a particular category of employees and prescribe implementing directives for converting that category of employees to coverage under applicable title 5 provisions. DHS will notify affected employees and labor organizations in advance of a decision to rescind the application of one or more subparts of this part to them.

(f) The Secretary or other authorized DHS official may exercise an independent legal authority to establish a parallel system that follows some or all of the requirements in this part for a category of employees who are not eligible for coverage under this part.

#### §9701.103 Definitions.

In this part:

*Authorized agency official* means the Secretary or an official who is authorized to act for the Secretary in the matter concerned.

*Coordination* means the process by which DHS, after appropriate staff-level consultation, officially provides OPM with notice of a proposed action and intended effective date. If OPM concurs, or does not respond to that notice within 30 calendar days, DHS may proceed with the proposed action. However, if OPM indicates the matter